

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Chris and Courtney Winter**  
  
**Osceola County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2017-AFO- *01*

**TO:** Chris and Courtney Winter  
1133 East Prairie  
Boyden, Iowa 51234

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Chris and Courtney Winter for the purpose of resolving water quality violations in connection with the construction of two confinement buildings. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Michelle Sabatini, Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall-1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Chris and Courtney Winter own a three acre parcel of property located in the SW ¼ of the SE ¼ of Section 24, Baker Township, Osceola County, Iowa. Two 1,200 head hog finisher buildings are being constructed at this location.

2. On August 16, 2016, DNR Field Office 3 received a complaint stating that Mr. Winter was constructing a 2,400 head finisher operation. The complaint stated that one building was in Chris Winter's name and one building was in Courtney Winter's name under her maiden name. The project was not in the DNR's database as an ongoing construction project.

3. On August 18, 2016, Michelle Sabatini, DNR Field Office 3 environmental specialist, visited the site and observed the buildings were under construction. Ms. Sabatini contacted Mr. Winter and he stated that he owned one of the buildings and his wife, Courtney, owned the other building. Mr. Winter stated that each building was a 1,200 head building (480 animal units each). Ms. Sabatini informed Mr. Winter that the buildings would be considered as one animal feeding operation and the operation required a Manure Management Plan (MMP) and a Construction Design Statement (CDS). Ms. Sabatini required Mr. Winter to submit these documents to DNR Field Office 3.

4. On August 22, 2016, Ms. Sabatini contacted Mr. Winter to discuss a DNR enforcement action. Mr. Winter asked what would happen if he sold one of the buildings and Ms. Sabatini explained that the buildings were currently under common management and considered as one animal feeding operation. After speaking to his attorney, Mr. Winter contacted Ms. Sabatini again and stated that there were no definitive names on the buildings and asked what would happen if Kyle Harms, his brother-in-law, owned one of the buildings. Ms. Sabatini stated the buildings were under common ownership currently and the MMP and CDS would need to be submitted. Ms. Sabatini told Mr. Winter that construction would need to stop until the documents were submitted and approved. Mr. Winter stated that he did not want to stop construction.

5. On August 23, 2016, Ms. Sabatini drove by the facility and the construction was ongoing. Ms. Sabatini spoke to Jeff Koops with Farmers Coop, who was working with Mr. Winter on the MMP. Ms. Sabatini informed Mr. Koops that Mr. Winter would also need to submit a CDS with the MMP. She also informed him that the buildings could not be populated until the documents were received and approved.

6. On September 2, 2016, Mr. Winter submitted a MMP and CDS for the animal feeding operation. The DNR issued an approval letter on September 30, 2016 and informed Mr. Winter that he could populate the building beginning on October 1, 2016.

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7. On September 6, 2016, DNR issued a Notice of Violation letter to Mr. Winter for the construction violation. The letter informed Mr. Winter that the matter was being referred for further enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.1 defines "common ownership" as the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common interest when it is held directly, indirectly through a spouse or dependent child, or both. Mr. Winter indicated that he owned one of the buildings and his wife owned the other building. The County Assessor's website indicates that Mr. and Mrs. Winter own the parcel of land where the facility is located. In accordance with the rules, the two buildings are considered to have common ownership and considered as one animal feeding operation.

3. 567 IAC 65.7(7) requires that a person planning to construct a confinement feeding operation, other than a small animal feeding operation as defined in 65.1 or other than an operation required to obtain a construction permit pursuant to 65.7(1), obtain from the DNR a construction approval letter as provided in 65.9(3) prior to beginning construction of a formed manure storage structure. 567 IAC 65.1 defines a small animal feeding operation as an animal feeding operation with an animal unit capacity of 500 or fewer animal units. 567 IAC 65.7(1) requires an animal feeding operation with an animal unit capacity of 1,000 animal units or more to obtain a construction permit. The animal unit capacity of the Winter's animal feeding operation is 960 and the animal feeding operation was required to obtain a construction approval letter prior to beginning construction of the two confinement buildings. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.9(3) requires that an animal feeding operation required to obtain a construction approval letter to submit a CDS and a MMP, along with alluvial soils information, karst terrain information, information showing the location of the confinement feeding operation, a filing fee of \$250.00, an indemnity fee, and documentation that the MMP has been submitted to the county auditor. The above-mentioned information was not submitted until construction had begun.

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**V. ORDER**

THEREFORE, the DNR orders and Mr. and Mrs. Winter agree to do the following:

1. Mr. and Mrs. Winter shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. Chris and Courtney Winter are jointly and severally liable for the payment of the penalty. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available. Mr. and Mrs. Winter have delayed the costs associated with developing and submitting a MMP and CDS for the animal feeding operation. The delayed costs include the preparation costs for the MMP and CDS, the payment of the filing fee, and the payment of the indemnity fee. Additionally, Mr. and Mrs. Winter gained an economic benefit by not delaying the construction of the two confinement buildings. Based on the above-mentioned information, it is estimated that Mr. and Mrs. Winter gained an economic benefit of at least \$1,000.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving

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the matter. Mr. and Mrs. Winter avoided the construction approval process during the construction of the two confinement buildings thus threatening the integrity of the animal feeding operation program and the construction approval process. By avoiding the construction approval process, Mr. and Mrs. Winter were able to construct the buildings without review or any other requirements and this did not allow the DNR the opportunity to review the animal feeding operation prior to the beginning of construction. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Mr. and Mrs. Winter have a duty to know the regulations and to be aware that their actions are subject to the regulations. Once Mr. Winter was informed of the situation, he made two attempts to change the information to avoid the regulations and not delay construction. Therefore, \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Chris and Courtney Winter. For that reason Chris and Courtney Winter waive the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

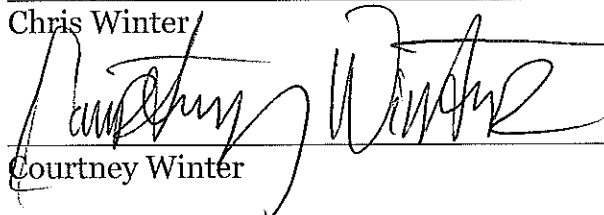
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 6<sup>th</sup> day of  
January, 2016.  
2017.

  
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Chris Winter

Dated this 24 day of  
Nov, 2016.

  
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Courtney Winter

Dated this 24 day of  
Nov, 2016.

Kelli Book, DNR Field Office 3, EPA, VIII.A.2